

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038  
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.

Application 00-11-056  
(Filed November 22, 2000)

Petition of The Utility Reform Network for Modification of Resolution E-3527.

Application 00-10-028  
(Filed October 17, 2000)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants \$228,897.32 to The Utility Reform Network (TURN) in compensation for substantial contributions to Decision (D.) 01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016.

**1. Background**

This is TURN's second request for an award of compensation for substantial contribution to rate stabilization plan decisions. The first award, which amounted to \$573,335.70, was granted in D.02-06-070, dated June 27, 2002. In that decision it was determined that TURN made substantial contributions to

D.01-01-018, D.01-03-029, D.01-03-082, and D.01-05-064.<sup>1</sup> D.02-06-070 also recognized TURN's expenses for participation in federal court litigation.<sup>2</sup>

On June 7, 2002, TURN filed its second rate stabilization compensation request, amounting to \$230,369.82. This request covers the period from May 2001 through early April 2002. TURN seeks compensation for work on issues associated with the development of a California Procurement Adjustment (CPA), development of utility retained generation (URG) ratemaking, development of the Department of Water Resources (DWR) revenue requirement, and other issues related to implementation of Assembly Bills 1 and 6 of the First Extraordinary Session of 2000-2001 (ABX1-1 and ABX1-6).<sup>3</sup>

On February 8, 2001, TURN filed a notice of intent to claim compensation (NOI) in the rate stabilization plan proceeding. After review of the NOI, Administrative Law Judge (ALJ) Walwyn found TURN eligible to file for

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<sup>1</sup> In error, D.02-06-070 also identifies D.01-03-081 and D.01-04-005 as decisions for which compensation was awarded. This error was corrected in D.02-07-007.

<sup>2</sup> Southern California Edison v. Lynch et al., Case No. 00-12056-RSWL (Mcx), United States District Court for the Central District of California (Western Division) (filed November 13, 2000); Pacific Gas and Electric Company v. Lynch et al., Case No. CV 00-4128 (SBA), United States District Court for the Northern District of California (filed November 8, 2000).

<sup>3</sup> In its first Request for Compensation, which was filed on July 16, 2001, TURN noted that, to the extent that any work on these particular items was performed prior to mid-2001, the associated expenses and costs were excluded and would be requested later. While a number of Commissions decisions issued in early 2001 addressed aspects of CPA and URG ratemaking, TURN states they were clearly interim decisions. It was expected they would be superseded by the outcomes adopted in later decisions. TURN's present request, therefore, covers the final decisions as well as the work on the earlier interim decisions. For example, this would apply to TURN's previous work done in relation to D.01-03-081 and D.01-04-005, which is being claimed at this time.

intervenor compensation by ruling dated April 20, 2001. Pursuant to Rule 76.76, this finding of eligibility remains in effect for all phases of this proceeding.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.<sup>4</sup> Section 1804(a) requires an intervenor to file an NOI to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.<sup>5</sup> It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable

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<sup>4</sup> All statutory citations are to the Public Utilities Code.

<sup>5</sup> To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### **3. Timeliness of Request**

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission approved D.02-04-016 at its scheduled public meeting on April 4, 2002 and mailed it to parties of record on April 8, 2002. The sixtieth day after the April 8 mailing was June 7, 2002. TURN's request for compensation was timely filed on June 7, 2002.

### **4. Substantial Contribution to Resolution of Issues**

Pursuant to Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.<sup>6</sup> Where a party has participated in settlement

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<sup>6</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 awarded San Luis Obispo Mothers For Peace and

*Footnote continued on next page*

negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.<sup>7</sup>

In summary, we find that TURN's efforts related to A.00-11-038, A00-11-056 and A.00-10-028, yielded substantial contributions to D.01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016. Our findings of substantial contribution for each of these decisions are discussed below. TURN has played a major role in this proceeding, which reconciled a number of important issues necessary to stabilize electric energy rates in the State of California and to facilitate the return of those rates to reasonable levels. Each of the referenced decisions reflects, in total or in part, contentions and recommendations made by TURN. Other recommendations were endorsed in the ALJ's Proposed Decision but not incorporated in the Commission decision that was based on an Alternate Decision. In such cases, there is precedent for a determination of substantial contribution. Also, as noted previously, Section 1802(h) provides that full compensation may be granted even if a party's position is not adopted in total. With this in mind in reviewing

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Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved). (*See also*, D.89-09-103, Order modifying D.89-03-063 which stated that in certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

<sup>7</sup> *See* D.98-04-0590, *mimeo.*, at 41.

TURN's participation and contributions in this proceeding, we have determined that it is not necessary to reduce TURN's request to reflect the fact that, in certain instances, its proposals were not adopted or entirely adopted.

#### **4.1 Contribution to D.02-04-016**

Thirty-five percent of TURN's request is associated with their contribution to D.02-04-016. D.02-04-016 established interim cost-of service revenue requirements for URG for the period January 2002 to December 2002 for SCE, PG&E and SDG&E. The URG revenue requirement reflects a forecast of utility-incurred costs associated with utility-owned generation assets and purchased power and is subject to a true up to reflect actual recorded costs. The true up is based on TURN's adopted cost recovery proposal and was necessary because of the short time frame for this phase of the proceeding. TURN's proposal to use recorded costs for generation operating expenses, subject to existing Commission ratemaking policies, was also adopted.

One main element of TURN's cost recovery proposal was not adopted. Based on its contention that the revenues resulting from the Incremental Cost Incentive Pricing (ICIP) mechanism for the San Onofre Nuclear Generating Station (SONGS) vastly exceeded the recorded costs of plant operation, TURN recommended that the ICIP mechanism be eliminated and replaced with cost of service ratemaking. It is clear that TURN enhanced the record on this subject, since its position was reflected in the ALJ's Proposed Decision. Also, while the final decision rejected TURN's position to eliminate the ICIP, we have previously determined that an intervenor's contribution to a final decision may be supported by contributions to the ALJ's proposed decision. Specifically, in D.92-08-030 we stated, "In cases where the Commission does not wholly adopt the customer's position, contribution to an ALJ's proposed decision reinforces a

substantial contribution to an order or decision.” (D.92-08-030, p. 4.) This opinion has been cited in a number of decisions related to intervenor compensation awards<sup>8</sup>. TURN also points out that the final decision adopted a slight offset on nuclear generation ratemaking when it adopted the recommendation of TURN and Aglet that the appropriate depreciation life for nuclear generation plants should be the remaining useful life of the plant, rather than the far shorter depreciation lives proposed by Edison.

We have considered the above and find that TURN made a substantial contribution to D.02-04-016.

#### **4.2 Contribution to D.01-10-067**

Six percent of TURN’s request is associated with their contribution to D.01-10-067. During the URG phase of the proceeding, an Assigned Commissioner’s Ruling, dated August 10, 2001, directed parties to file briefs, under an accelerated schedule, on the issue of whether a market valuation approach for determining URG revenue requirements should be used. The issue was specific to PG&E, since no other party had proposed the use of market valuation for purposes of setting the URG revenue requirements. In briefs, TURN as well as ORA, Aglet and CLECA argued against the proposal. TURN argued that such an approach would raise issues of transition cost recovery rather than recovery of going-forward URG costs, the legislative history of ABX1-6 demonstrated that market valuation is not required for purposes other than calculating uneconomic costs, and that PG&E had previously argued that book value was a reasonable proxy for market value. In rejecting PG&E’s

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<sup>8</sup> For example, see D.99.04-004, D.96-09-024, D.96-08-023 and D.95-05-003.

position on market valuation, D.01-10-067 notes that TURN's comments correctly grasped the limited nature of the decision as setting a prospective URG revenue requirement, rather than addressing broader issues of transition cost recovery.

We note that many of TURN's arguments were similar to those of other parties opposing PG&E's proposal. However, in finding that TURN made substantial contributions to D.01-10-067, we will not reduce its compensation request for duplication of effort. Section 1802.5 allows for full compensation in cases where a party materially supplements, complements or contributes to the presentation of another party, if the participation makes a substantial contribution to a commission order or decision. In its compensation request, TURN points out that, due to the broad range of issues in this proceeding, it shared a position with nearly every party on at least one issue. TURN indicates that it took all reasonable steps to keep duplication to a minimum and to ensure that, when it did happen, the work served to complement and assist the showings of other parties. We agree that in this proceeding, where a number of parties have similar interests and schedules have been accelerated, duplication of efforts may be unavoidable. For the purposes of TURN's current intervenor compensation request, to the extent that such duplicate participation results in a substantial contribution to a commission decision, we consider such participation to be complementary and eligible for full compensation.

#### **4.3 Contribution to D.02-02-052 and D.02-03-062**

Thirty-two percent of TURN's request is associated with their contribution to D.02-02-052 and D.02-03-062. D.02-02-052, dated February 21, 2002, implemented cost recovery of the DWR revenue requirements related to the power purchase program pursuant to ABX1-1. On November 5, 2001 DWR submitted to the Commission a revenue requirement of \$10,003,461,000



representing the total to be collected from the utility customers of PG&E, Edison and SDG&E covering the period January 17, 2001 through December 31, 2002. Based on comments from parties in this proceeding and corrections to mathematical errors and calculations in its submittal, DWR sent a February 21, 2001 letter concluding that certain adjustments totaling \$958 million could be made to its pending revenue requirement. D.02-02-052 determined how the DWR revenue collection of the resulting amount of \$9,045,462,000 would be allocated among the customers of each of the utilities and established procedures to implement the collection process. D.02-03-003 corrected several clerical errors in D.02-02-052. D.02-03-062 was issued in response to the applications for rehearing of D.02-02-052 and D.02-03-003 filed by PG&E, Edison, TURN and Aglet, and the City of San Diego. Among other things, D.02-03-062 modified the inter-utility allocation of the DWR revenue responsibility determined in D.02-02-052.

On the revenue requirement issues, TURN called upon the DWR to use more realistic forecasts for gas and electricity prices and emphasized the need to use ancillary service cost forecasts that were consistent with both the lower gas and electricity forecasts and with the amount of self-provision of ancillary services available to the utilities. As described in D.02-02-052, various elements of the DWR revenue requirement had been adjusted, including net short energy costs and ancillary service costs. While the decision does not attribute such adjustments to any particular party, it is reasonable to assume that TURN is at least partly responsible for these changes, given its steady submission of comments pointing out these errors and oversights in the DWR's early forecasts.

Regarding the inter-utility allocation issues, D.02-02-052 rejected TURN's proposed pro rata or "postage stamp" approach in favor of the "net

short” allocation methodology. However, the ALJ’s Proposed Decision (as most recently revised prior to the February 21, 2002 Commission Meeting) would have adopted the “postage stamp” approach allocation proposed by TURN, including the utility-specific adjustments that distinguished TURN’s proposal from that of PG&E. In the discussion above concerning D.02-04-014, we discussed prior precedents where an intervenor’s contribution to a final decision may be supported by contributions to the ALJ’s proposed decision, even where the Commission’s final decision does not mirror the proposed decision on that issue. That discussion is also applicable here. In its compensation request, TURN also notes that the final allocation in D.02-03-062 (after rehearing) is closer to the revised ALJ PD than the allocation adopted in D.02-02-052 and concludes that, while the Commission did not adopt its specific allocation proposal, the final outcome was reasonably close to the outcome that would have been adopted had the revised ALJ PD been voted out and closer to TURN’s recommendation than to the outcome under the “net short” approach embraced by D.02-02-052.

We have considered the above and find that TURN made substantial contributions to both D.02-02-052 and D.02-03-062.

#### **4.4 Contribution to D.02-03-058**

One percent of TURN’s request is associated with their contribution to D.02-03-058. In D.02-03-058, the Commission established cost-of-service revenue requirements for the costs related to the ISO and provision of ancillary services for PG&E and Edison. On February 21, 2002 Commissioner Lynch received a letter from the DWR, which identified adjustments that could be made to PG&E’s, Edison’s and SDG&E’s URG revenue requirements to account for costs imposed by the Independent System Operator (ISO). In a ruling dated March 4, 2002, the ALJ in the DWR revenue requirements phase of this proceeding

directed that the DWR letter be placed into the administrative record. On the same date, Commissioner Lynch issued an Assigned Commissioner's Ruling that solicited comments on whether the URG revenue requirement adjustments identified in the February 21<sup>st</sup> letter are appropriate and should be implemented in the URG phase of this docket.

TURN's March 14, 2002 comments focused on the inclusion of costs related to PG&E's wholesale load in the forecasted revenue requirement for that utility's ISO charge, and proposed excluding those costs from the approved revenue requirement. In D.02-03-058, TURN's concern and proposal were reflected in Finding of Fact 11 and Conclusion of Law 5 where the disputed ISO related costs incurred on behalf of the municipal utilities and other wholesale entities were excluded from PG&E's 2002 URG revenue requirement.

TURN also stated its belief that PG&E would actually have surplus ancillary services for sale from its URG at certain times of day and of the year and any payments or credits for that surplus made to PG&E by DWR should flow through to ratepayers. In D.02-03-058, the Commission subjected revenues for ancillary services to balancing account treatment.

We have considered the above and find that TURN made substantial contributions to D.02-03-058.

#### **4.5 Contribution to D.01-03-081 and D.01-04-005**

Eight percent of TURN's request is associated with their contribution to D.01-03-081 and D.01-04-005. D.01-03-081, dated March 27, 2001, implemented legislation allowing the state to provide electricity that its utilities were unable to provide. It required the utilities to provide the DWR with the money they collected that was earned by the sale of power paid by the DWR. It also set out a proposed method that the Commission would use to calculate the California

Procurement Adjustment (CPA) established by § 360.5 and applied that proposed method to calculate, for each utility, a proposed company-wide average CPA rate. Using those rates, the decision determined a proposed CPA revenue amount, which could be used by the DWR to begin the process of issuing bonds. The decision process relied on workshops and comments from interested parties, including TURN. TURN focused in part on the need to exclude certain costs, including nuclear incentive amounts, from the CPA calculation. Provisions in the decision allowed for the filing of comments by March 29, 2001 on certain of the sections including the method for calculating the CPA. Again, TURN submitted comments focusing on specific costs that should be excluded from the CPA.

D.01-04-005, dated April 4, 2001, incorporated parties' comments on D.01-03-081 in adopting a final method to calculate the CPA, applying that method to determine a company-wide CPA rate for each utility and using those CPA rates to determine the CPA revenue amount that could be used by the DWR to begin the process of issuing bonds. The decision adopting a final methodology for the CPA calculation made specific changes to the calculation consistent with TURN's recommendations regarding the exclusion of indirect administrative and general (A&G) costs as well as corrections regarding certain customer service and information and A&G costs. We find that TURN made substantial contributions to D.01-03-081 and D.01-04-005.

#### **4.6 Contribution to D.02-02-051**

Ten percent of TURN's request is associated with their contribution to D.02-02-051. D.02-02-051 adopted a rate agreement between the Commission and the California Department of Water Resources. The rate agreement established a mechanism for DWR to recover its revenue requirement and was

intended to facilitate the issuance of revenue bonds by the DWR. An Assigned Commissioner's Ruling, dated July 18, 2001, sought comments on the draft Rate Agreement. Parties, including TURN, filed comments on August 1, 2001.

TURN submits that many of its comments were incorporated in the ALJ's August 28, 2001 Draft Decision, including (1) the need to establish a meaningful public process for purposes of determining the reasonableness of the DWR revenue requirement, (2) DWR participation in evidentiary hearings before the Commission if it seeks a revenue requirement that requires a rate increase, (3) the need for the provisions for rate adjustments to apply to revenue surpluses as well as revenue deficiencies, (4) the condition that a trustee under the agreement must not have any financial interest in any of the power purchase contracts and (5) the need for flexibility to accommodate subsequently-enacted legislation. A revised draft decision was issued on February 14, 2002 and incorporated the vast majority of the changes recommended by TURN and embraced in the original Draft Decision. The findings of fact and conclusions of law adopted in D.02-02-0251 varied little from the revised draft. We find that TURN made a substantial contribution to D.02-02-051.

#### **4.7 D.01-03-082 and D.02-01-001**

In this compensation request, TURN has included costs for its response to PG&E's petition to the Court of Appeal of the State of California seeking review of D.01-03-082 and D.02-01-001. These costs amount to 8% of TURN's request. D.01-03-082 authorized a three-cent per kilowatt-hour surcharge for PG&E and Edison and adopted accounting changes proposed by TURN. The TURN proposal required that balances in the Transition Revenue Account ("TRA") be transferred to the Transition Cost Balancing Account ("TCBA") each month, whether negative or positive, in effect, netting the TRA and the TCBA.

The accounting change was included in the applications for rehearing filed by Edison and PG&E. While D.02-01-001 granted limited rehearing on the issue of whether rate controls under Assembly Bill 1890 should be ended, rehearing on the remaining issues, including the accounting change, was denied. PG&E then filed a petition for writ of review of D.01-03-082 and D.02-01-001 with the Court of Appeal of the State of California. PG&E's petition was denied on June 12, 2002. We will allow TURN recovery of costs for its contribution to upholding D.02-01-001 and D.01-03-082.<sup>9</sup>

#### **4.8 Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (*See* D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN submits that the productivity of its participation in this proceeding was very substantial, stating that on the URG revenue requirement,

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<sup>9</sup> These costs were incurred after TURN filed its first compensation request for contributions to rate stabilization plan decisions, which included D.01-03-082. TURN's first request was filed on July 16, 2001. Work on the accounting change appeal was performed during the first quarter of 2002.

adoption of its balancing account proposal will protect ratepayers from overpaying amounts that could easily be in the tens of millions of dollars and on the issues of the ISO and ancillary services revenue requirements, the changes proposed in its final round of comments amounted to retail ratepayer savings of approximately \$30 million. It should also be noted that, in this decision, we have determined that TURN has made substantial contributions to decisions where the determination and inter-utility allocation of billions of dollars were at issue. For these reasons, we find that TURN's participation in the phases of the rate stabilization plan proceeding that resulted in the decisions discussed above in Sections 4.1 through 4.6 was productive.

## **5. Reasonableness of Requested Compensation**

TURN requests \$230,369.82 as follows:

	Year	Rate	Hours	Total
<u>Attorney Fees</u>				
R. Finkelstein - Professional	2001	\$310.00	281.50	\$ 87,265.00
R. Finkelstein - Professional	2002	\$340.00	113.00	\$ 38,420.00
R. Finkelstein - Compensation	2002	\$170.00	26.25	\$ 4,462.50
M. Florio - Professional	2001	\$350.00	17.00	\$ 5,950.00
M. Florio - Professional	2002	\$385.00	14.00	\$ 5,390.00
R. Wu - Professional	2001	\$350.00	50.00	\$ 17,500.00
R. Wu - Professional	2002	\$385.00	10.00	\$ 3,850.00
R. Wu - Compensation	2002	\$192.50	1.00	\$ 192.50
M. Freedman - Professional	2001	\$200.00	90.25	\$ 18,050.00
M. Freedman - Professional	2002	\$230.00	19.00	\$ 4,370.00
Total Attorney Fees				\$ 185,450.00
<u>Expert Witness Fees/Expenses</u>				
JBS ENERGY INC.				
W. Marcus	2000/2001	\$160.00	19.75	\$ 3,160.00
W. Marcus	2001/2002	\$175.00	122.00	\$ 21,350.00
J. Nahigian	2000/2001	\$100.00	8.00	\$ 800.00
J. Nahigian	2001/2002	\$115.00	22.50	\$ 2,587.50
G. Ruszovan	2001/2002	\$115.00	1.43	\$ 164.45
JBS Expenses				\$ 319.20
Total JBS Costs				\$ 28,381.15

Other Costs

Photocopying costs	\$ 13,153.96
Postage costs	\$ 2,130.39
Fax costs	\$ 141.30
Federal Express/Delivery costs	\$ 137.59
DWR Contracts	\$ 152.25
Phone costs	\$ 357.23
Lexis charges	\$ 465.95
Total Other Costs	\$ 16,538.67

TOTAL REQUEST	<u>\$ 230,369.82</u>
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**5.1 Hours Claimed**

TURN has documented its claimed hours through detailed records of the time spent by its attorneys and outside experts in the different phases of this proceeding. The records indicate both the professional hours and the activities associated with the hours. TURN states that each of its attorneys reviewed the hourly tabulations and only included those that were reasonable for the underlying task. Also, TURN contends that, in addressing a wide range of issues in a proceeding with one of the broadest scopes in recent memory, it provided the highest quality advocacy on very short notice, using far fewer resources than the other parties, particularly the utilities and that all hours included in its request are reasonable.

We have reviewed the detailed billing information submitted by TURN. We conclude that the hourly breakdowns and allocation of hours reasonably support the claimed hours for TURN.

**5.2 Hourly Rates**

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.” In its compensation request, TURN has



provided information from the Of Counsel Annual Survey of the Nation's 700 Largest Law Firms for the years 1999/2000 and 2000/2001 to justify the attorney hourly rates that are included in its compensation request. The summary information provided by TURN lists billing rate data for firms in the San Francisco and Los Angeles areas and indicates that, in general, TURN's requested billing rates are within those of the prevailing market.

We have previously adopted the requested rates for Robert Finkelstein of \$310/hour for 2001 in D.02-03-033 and \$340/hour for 2002 in D.03-01-074, the requested rates for Michel Florio of \$350/hour for 2001 in D.02-06-070 and \$385/hour for 2002 in D.02-09-040 and the requested rates for Randy Wu of \$350/hour for 2001 in D.02-09-040 and \$385/hour for 2002 in D.03-01-074. It is reasonable to use these hourly rates again here.

TURN has also requested rates of \$200/hour for 2001 and \$230/hour for 2002 for Matthew Freedman. The 2001 request is the same as that included in TURN's March 15, 2002 compensation award request related to Investigation 01-04-002. That request was addressed in D.02-10-056 where we adopted a 2001 rate of \$190/hour for Freedman. Use of that rate is also reasonable for the current compensation request. We will also adopt a 2002 rate of \$200/hour for Freedman. This is consistent with the adopted 2002 hourly rate for Marcel Hawiger of TURN<sup>10</sup> whose experience is similar to that of Freedman.

### **5.3 Other Costs**

TURN's request includes \$16,538.67 in other costs, the majority of which relate to the preparation and distribution of testimony, briefs, pleadings

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<sup>10</sup> For Hawiger, a 2001 rate of \$190/hour was adopted in D.01-10-008 and a 2002 rate of \$200/hour was adopted in D.02-09-040.

and other necessary documents and correspondence related to this case. We find these costs to be reasonable.

#### **5.4 Expert Witness Fees and Expenses**

As part of its compensation request, TURN requests \$28,381.15 to cover costs billed by JBS Energy, Inc. (JBS), the consulting firm that has provided expert witness services to TURN during this proceeding. JBS's work on behalf of TURN focused on URG revenue requirements, DWR revenue requirement and inter-utility allocation, and implementation of ABX1-1 and the development of the CPA.

TURN's request includes JBS charges for limited work associated with attending the real-time metering workshop conducted in this proceeding after D.01-05-064 was issued. In the timeframe covered by this request, no decision incorporating or reflecting the results of the workshop has been issued. Therefore, we cannot conclude that costs associated with the workshop meet the requirements for intervenor compensation and will exclude the associated 5.5 hours from the calculation of this award. If a decision incorporating the workshop results were subsequently issued, TURN will then have the opportunity to request and justify compensation for these hours.

The hourly rates included in JBS's charges are consistent with those adopted in prior decisions. For Marcus, the requested Fiscal year (FY) 2000-2001 rate of \$160/hour was adopted in D.01-10-008, and the FY 2001-2002 rate of \$175/hour was adopted in D.02-11-020. For Nahigian, the requested FY 2000-2001 rate of \$100/hour was adopted in D.01-10-008, and the FY 2001-2002 rate of \$115/hour was adopted in D.02-11-017. We will incorporate these rates for this proceeding as well. We will also adopt the requested rate of \$115/hour for

Ruszovan for FY 2001-2002. Ruszovan's experience and prior hourly charges<sup>11</sup> are comparable to that of Nahigian.

Other expenses related to the testimony of the JBS expert witnesses amount to \$319.20, which we find reasonable.

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<sup>11</sup> For Ruszovan, a FY 2000-2001 rate of \$100/hour was adopted in D.02-04-042.

**5.5 Summary**

We will base the award to TURN on the following:

	Year	Rate	Hours	Total
<u>Attorney Fees</u>				
R. Finkelstein - Professional	2001	\$310.00	281.50	\$ 87,265.00
R. Finkelstein - Professional	2002	\$340.00	113.00	\$ 38,420.00
R. Finkelstein - Compensation	2002	\$170.00	26.25	\$ 4,462.50
M. Florio - Professional	2001	\$350.00	17.00	\$ 5,950.00
M. Florio - Professional	2002	\$385.00	14.00	\$ 5,390.00
R. Wu - Professional	2001	\$350.00	50.00	\$ 17,500.00
R. Wu - Professional	2002	\$385.00	10.00	\$ 3,850.00
R. Wu - Compensation	2002	\$192.50	1.00	\$ 192.50
M. Freedman - Professional	2001	\$190.00	90.25	\$ 17,147.50
M. Freedman - Professional	2002	\$200.00	19.00	\$ 3,800.00
Total Attorney Fees				\$ 183,977.50
<u>Expert Witness Fees/Expenses</u>				
JBS ENERGY INC.				
W. Marcus	2000/2001	\$160.00	19.75	\$ 3,160.00
W. Marcus	2001/2002	\$175.00	122.00	\$ 21,350.00
J. Nahigian	2000/2001	\$100.00	8.00	\$ 800.00
J. Nahigian	2001/2002	\$115.00	17.00	\$ 1,955.00
G. Ruszovan	2001/2002	\$115.00	1.43	\$ 164.45
JBS Expenses				\$ 319.20
Total JBS Costs				\$ 27,748.65
<u>Other Costs</u>				
Photocopying costs				\$ 13,153.96
Postage costs				\$ 2,130.39
Fax costs				\$ 141.30
Federal Express/Delivery costs				\$ 137.59
DWR Contracts				\$ 152.25
Phone costs				\$ 357.23
Lexis charges				\$ 465.95
Total Other Costs				\$ 16,538.67
TOTAL AWARD				<u>\$ 228,264.82</u>

**6. Award to TURN**

We award TURN \$228,897.32 for contributions to D.01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request. Interest will continue until the utility makes full payment. In D.02-06-070, TURN's first compensation award in this proceeding, we split the responsibility for payment equally between Edison and PG&E. However, for this second request, it would be appropriate to also allocate a portion of the costs to SDG&E. The decisions under consideration relate to URG, DWR revenue requirement and inter-utility allocation, the California Procurement Adjustment and the Rate Agreement between the DWR and the CPUC, all of which affect SDG&E and which were the subject of full participation by SDG&E. We will assess responsibility for payment in accordance with the respective 2001 California jurisdictional electric revenues of PG&E, Edison and SDG&E.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which TURN requests compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

**7. Waiver of Comment Period**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

**8. Assignment of Proceeding**

Loretta Lynch and Geoffrey Brown are the Assigned Commissioners. The Administrative Law Judges who have been assigned to this proceeding include Angela Minkin, Christine Walwyn, Joseph DeUlloa, John Wong, Timothy Kenney, Thomas Pulsifer, Timothy Sullivan and Peter Allen.

**Findings of Fact**

1. TURN has made a timely request for compensation for its contributions to D.01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016.

2. TURN contributed substantially to D.01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016.

3. The participation of TURN was productive and avoided unreasonable duplication with other parties.

4. TURN requests hourly rates for Finkelstein, Florio and Wu that have previously been approved by the Commission.

5. A 2001 hourly rate of \$190/hour for Freedman has previously been approved by the Commission and is reasonable for use in this proceeding.

6. A 2002 hourly rate of \$200/hour for Freedman is reasonable based on awards to other attorneys with comparable experience.

7. The consultant services costs for JBS include hourly rates for Marcus and Nahigian that have previously been approved by the Commission.

8. The requested 2001/2002 hourly rate of \$115/hour for Ruszovan is reasonable based on awards to other experts with comparable experience.

9. The hours claimed for work performed by TURN and its consultant JBS are itemized and, with the exception of those related to the real-time metering workshop, reasonable.

10. The miscellaneous costs incurred by TURN and JBS are reasonable.

**Conclusions of Law**

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$228,897.32 for contributions to D.01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$228,897.32 in compensation for its substantial contribution to Decision (D.) 01-03-081, D.01-04-005, D.01-10-067, D.02-02-051, D.02-02-052, D.02-03-058, D.02-03-062 and D.02-04-016.

2. The award should be paid pursuant to Pub. Util. Code § 1807 by Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) based on the utilities' respective 2001 California jurisdictional electric revenues. Payment shall be made within 30 days of the effective date of this order. Edison, PG&E and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release

H.15, beginning with the 75<sup>th</sup> day after June 7, 2002, the date the request was filed.

3. The comment period for today's decision is waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.



**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	D
<b>Contribution Decision(s):</b>	D0103081, D0104005, D0110067, D0202051, D0202052, D0203058, D0203062 and D0204016
<b>Proceeding(s):</b>	A0011038, A0011056 and A0010028
<b>Author:</b>	ALJ Pulsifer
<b>Payer(s):</b>	Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Change/ Disallowance</b>
The Utility Reform Network	6/07/02	\$230,369.82	\$228,264.82	Failure to justify hourly rates; premature

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Robert	Finkelstein	Attorney	The Utility Reform Network	\$310 \$340	2001 2002	\$310 \$340
Michel	Florio	Attorney	The Utility Reform Network	\$350 \$385	2001 2002	\$350 \$385
Mathew	Freedman	Attorney	The Utility Reform Network	\$200 \$230	2001 2002	\$190 \$200
Randy	Wu	Attorney	The Utility Reform Network	\$350 \$385	2001 2002	\$350 \$385
William	Marcus	Economist	The Utility Reform Network	\$160 \$175	2000/2001 2001/2002	\$160 \$175
Jeffrey	Nahigian	Economist	The Utility Reform Network	\$100 \$115	2000/2001 2001/2002	\$100 \$115
Gregory	Ruszovan	Analyst	The Utility Reform Network	\$115	2001/2002	\$115